BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATES FORMER BENEFIT DECISION NO. 5298 AS A PRECEDENT DECISION PURSUANT TO SECTION 409 OF THE UNEMPLOYMENT INSURANCE CODE.

In the Matter of:

WILLIAM H. BARNER
(Claimant)
S.S.A. No.

RUSSELL TRUCK LINE
(Appellant-Employer)

PRECEDENT
BENEFIT DECISION
No. P-B-288

FORMERLY
BENEFIT DECISION
No. 5298

The above-named employer on August 10, 1948, appealed from the decision of a Referee (LA-14515) which held that the claimant did not leave his most recent work voluntarily without good cause within the meaning of Section 58(a)(1) of the Unemployment Insurance Act /now section 1256 of the Unemployment Insurance Code/.

Based on the record before us, our statement of fact, reason for decision, and decision are as follows:

STATEMENT OF FACT

The claimant was last employed for approximately five years as a truck driver for the employer herein. This work terminated on May 15, 1948, for reasons hereinafter set forth.

On May 27, 1948, the claimant registered for work and filed a claim for benefits in a Los Angeles office of the Department of Employment. Thereafter the employer protested and on July 1, 1948, the Department issued a determination which held that the claimant was not disqualified for benefits under the provisions of Section

58(a)(2) of the Act /now section 1256 of the code/. The employer appealed, contending that the claimant acted to leave his last work voluntarily without good cause within the meaning of Section 58(a)(1) of the statute /now section 1256 of the code/. The Referee held the claimant eligible for benefits under Section 58(a)(1) /now section 1256/ and the employer filed the instant appeal, reiterating the contention that the claimant be disqualified for benefits under Section 58(a)(1) of the Act /now section 1256 of the code/.

On April 4, 1948, during his off-duty hours, the claimant was arrested on a charge of driving his automobile while intoxicated and subsequently convicted. In this connection the claimant had been tried, convicted and fined on pleading guilty to a similar charge in November, 1947. As a result of the above-mentioned second offense, the claimant's license to drive was suspended for one year commencing on or about May 15, 1948. Without this license the claimant could not continue in his position as a truck driver with the employer, and he was dropped from the payroll when the company learned of the suspension. At the time of his separation the claimant was willing to accept any other type of work with the employer, but the latter had no openings in which the claimant could be employed. However, the employer expects to rehire the claimant whenever his license is "reinstated."

The employer contends in appealing to this Appeals Board that the claimant's conduct was "tantamount" to a voluntary leaving of work when he failed to "exercise the necessary care or caution to protect his right to drive vehicles."

REASON FOR DECISION

In the instant case the sole issue is whether an individual employed as a motor vehicle operator may be disqualified under the provisions of Section 58(a)(1) of the Unemployment Insurance Act /now section 1256 of the code/ for the reason that he left his employment voluntarily without good cause when his license to drive was suspended because of an illegal act on his part. So far as it has been called to our attention, this question has never before been presented to this Board for decision.

Generally speaking, as between the claimant and employer herein there existed a contract for hire, by the terms of which the latter agreed to furnish a truck for the claimant to operate and work for him to perform with compensation therefor. In return, the claimant agreed to furnish his skill as a truck driver, his services and his authority from the State of California to operate a truck. During the term of the contract, a circumstance occurred which brought the contract to an end because the claimant was no longer able to furnish one of the essentials to the contract, namely, his authority from the State to operate the truck furnished to him. It must be recognized that this event in no way identifies the employer as the moving party in the severance of the employer-employee relationship. It necessarily follows that the relationship was terminated either by the claimant or by circumstances over which neither the employer nor the claimant had any control. Although in a sense it might be said that the contract was ended by operation of law, such a narrow view would ignore the obvious fact that it was the claimant's voluntary and illegal action which caused the law to operate to deprive him of his license. It was the claimant who set in motion the series of events which placed his license and his position in jeopardy. His drunkenness led to his arrest, the arrest led to his conviction, the conviction to the suspension of his license; and the latter fact prevented his continued employment.

In this connection it should be noted that circumstances closely analogous to those described above have been considered by appeals tribunals in a number of other jurisdictions, and the particular authorities have assessed disqualifications for voluntary leaving against individuals claiming benefits for unemployment resulting from their own illegal acts. Pennsylvania is one of the larger states to take this view (See Board of Review Decisions Nos. B-44-94-A-5443, March 27, 1947; and B-44-99-G-1936, November 25, 1946). In the latter cited decision it was held that a truck driver who, after serving a sentence for six months in jail for driving his personal automobile while intoxicated, was refused re-employment in his former position because his driver's license had been suspended, had left voluntarily without good cause, inasmuch as he "voluntarily engaged in conduct the natural and probable consequence of which was to place him in a position where he could not continue working in the employment which he held."

Delaware likewise adopted a similar view in the case of an individual arrested on the premises of his employer and subsequently convicted on a charge of nonsupport of his family (Delaware Unemployment Compensation Commission Decision, Appeal Docket No. 712-A, January 8, 1946). In holding that the claimant was disqualified for benefits the Commission said, "It may be that the claimant left his job involuntarily but . . . it cannot be said to have been without fault on his own part. He was arrested and convicted by a court of competent jurisdiction for failure to support his wife and family. Thus, he deliberately refused to assume a responsibility placed upon him by the law which was a deliberate and wilful act on his part. Under the circumstances, we are of the opinion that the claimant voluntarily left his job without good cause."

In our opinion the views expressed by the aforementioned jurisdictions are sound and applicable to the circumstances under consideration in this appeal. The claimant herein voluntarily embarked upon a course of conduct resulting in the loss of his license. Under the circumstances described herein, we conclude that the claimant's loss of employment was attributable to an act of volition on his part, and hence was voluntary. Therefore, he is subject to disqualification for benefits under Section 58(a)(1) of the Act /now section 1256 of the code/ for the five-week term prescribed in Section 58(b) /now section 1260 of the code/.

DECISION

The decision of the Referee is reversed. Benefits are denied.

Sacramento, California, February 24, 1949.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

MICHAEL B. KUNZ, Chairman

GLENN V. WALLS

PETER E. MITCHELL

Pursuant to section 409 of the Unemployment Insurance Code, the above Benefit Decision No. 5298 is hereby designated as Precedent Decision No. P-B-288.

Sacramento, California, April 6, 1976.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

DON BLEWETT, Chairperson

MARILYN H. GRACE

CARL A. BRITSCHGI

HARRY K. GRAFE

RICHARD H. MARRIOTT